

Date of decision: 19.4.1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J  
(19.4.1996)

M/s.N. J. Mehta Associates for the petitioner  
Mr. M. C. Shah for the respondents.

C.A.V.JUDGMENT:

Heard the learned counsel for the parties.

The petitioner has challenged the resolution annexure-A dated 25-10-1975 passed by the respondent Municipality and annexure-G, calculation of the amount of gratuity and pension payable to the petitioner. It is not in dispute that there is break in service of the petitioner for the period from 22-6-1962 to 31-1-1967. The period of break is less than five years. The break had occurred for the reason that the petitioner voluntarily resigned from service. He had resigned from service to get better employment and he enjoyed the benefits of the better employment also for a long period. Thereafter it appears that he had resigned therefrom and he was able to persuade the Municipality to give him appointment. It was a fresh appointment which was given to the petitioner and there was no justification for condonation of the break in service. The condonation, as stated earlier, was the result of the petitioner's own volition. He cannot be given double benefits. He enjoyed better employment and thereafter he wanted to take the benefit of the earlier employment with the respondent Municipality, though he had resigned from service.

2. It is not in dispute that the resolution dated 22-5-1978 was passed in the meeting in which the petitioner's son, who was a councillor of the Municipality, had participated. It is not in dispute that in the meeting in which the decision was taken by the Municipality to condone the break in service of the petitioner, the petitioner's son was present and had taken part in the deliberations also. The resolution for condoning the break in service of the petitioner is vitiated as one of the members of the Council who was biased in the matter had participated in the proceedings. I do not find any substance in the writ petition.

3. In the result the writ petition fails and the same is dismissed. Rule discharged. No order as to costs.